**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.**

**Case No. : Crl. Appeal No.507-SB of 1994**
**Date of Decision : March 15, 2007.**

Virsa Singh and others ..... Appellants

Vs.

State of Punjab ..... Respondent

**Coram : Hon'ble Mr.Justice Mahesh Grover**

* * *

Present : Mr.D.S.Pheruman, Advocate
for the appellants.

Mr.Ashutosh Hoshiarpuri, AAG, Punjab.

Mr.Navdeep Chhabra, Advocate
for Mr.Vikram Chaudhri, Advocate
for the complainant.

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**MAHESH GROVER, J. (Oral) :**

Appellants along with two other persons were sent up to stand trial for having committed an offence under Sections 148, 307, 326, 324, 325, 323/149 IPC pursuant to a case registered vide FIR No.75 of 1988 at Police Station Lopoke. Two of the persons namely Sucha Singh and Balwinder Singh, who were initially arrayed as accused, were acquitted by the trial court while the present appellants were convicted as follows :-

***"Darshan Singh :***

| ***Sr.No.*** | ***Under Section*** | ***Imprisonment*** |
|---|---|---|
| *1.* | *148 IPC* | *R.I. for one year.* |
| *2.* | *307 IPC* | *R.I. for four years and fine of Rs.1000/- or in default, further R.I. for three months.* |

| | | |
|---|---|---|
| *3.* | *326/149 IPC* | *R.I. for 2-1/2 years and fine of Rs.500/- or in default, further R.I. for two months.* |
| *4.* | *325/149 IPC on two counts* | *R.I. for two years and fine of Rs.250/- or in default, further R.I. for one month on each count.* |

***Bakshish Singh*** *:*

| ***Sr.No.*** | ***Under Section*** | ***Imprisonment*** |
|---|---|---|
| *1.* | *148 IPC* | *R.I. for one year.* |
| *2.* | *307/149 IPC* | *R.I. for four years and fine of Rs.1000/- or in default, further R.I. for three months.* |
| *3.* | *326 IPC* | *R.I. for 2-1/2 years and fine of Rs.500/- or in default, further R.I. for two months.* |
| *4.* | *325/149 IPC on two counts* | *R.I. for two years and fine of Rs.250/- or in default, further R.I. for one month on each count.* |

***Virsa Singh, Avtar Singh and Balkar Singh*** *:*

| ***Sr.No.*** | ***Under Section*** | ***Imprisonment*** |
|---|---|---|
| *1.* | *148 IPC* | *R.I. for one year each.* |
| *2.* | *307/149 IPC* | *R.I. for four years and fine of Rs.1000/- or in default, to undergo further R.I. for two months each.* |
| *3.* | *325/149 IPC on two counts* | *R.I. for two years and fine of Rs.250/- or in default, further R.I. for one month each, on each count."* |

On 12.5.1988, the appellants are alleged to have attacked the complainant and other persons namely Bakshish Singh, Sohan Singh and Mahn Singh, inflicting the following injuries upon them :-

***Sohan Singh*** *:* ***1.*** *An incised stab wound 4 cm x 2 cm present on the left side of the lower part of chest on lateral side 14 cm from left nipple at 5.0' clock position. A*

*portion of omentum was coming out of the wound which moved with respiration. Wound bleeds on touch.*

***Bakshish Singh*** **: 1.** *A reddish coloured contusion 12 cm x 3 cm present on the left side of left buttock vertically placed.*

**2.** *A reddish coloured contusion 10 cm x 3 cm present on the upper half of left buttock and was obliquely placed.*

**3.** *A reddish coloured contusion 9 cm x 2 cm present in the left scapular region and was obliquely placed.*

**4.** *A reddish coloured contusion 18 cm x 5 cm present on the back of left chest 5 cm below injury no.3 and was obliquely placed.*

**5.** *A reddish coloured contusion 15 cm x 4 cm present on the dorsolateral side of left forearm in its upper 1/3 rd swelling was present.*

**6.** *An incised wound 3 cm x 2 cm present on the left side of fore head 4 cm above the medial end of left eye-brow. Underneath bone was found cut and depressed. Wound bleed on touch.*

***Mahn Singh*** **:** **1.** *A lacerated wound 6 cm x 1-1/2 cm on the left side of head 9 cm above the left ear. Wound bleed on touch. Depth of the wound was not probed.*

**2.** *A lacerated wound 2 cm x 1 cm present in the cleft between little and ring finger of left hand.*

**3.** *Complained of pain in the neck."*

The aforesaid case having been registered against them, the police completed the investigation and the case was committed to the Court

of Sessions for trial.

All the accused persons were charged for having committed an offence under Sections 148, 307, 326, 324, 325, 323/149 IPC.

The prosecution, in order to establish its case, examined as many as 10 witnesses, apart from tendering the copies of *jamabandi* of the disputed land for the year 1985-86 as Ex.P-L and *khasra girdawari* for the year 1986-88 as Ex.P-M.

The accused persons in their statements under Section 313 of the Cr.P.C. pleaded false implication. One of the accused Balkar Singh set up the plea of alibi stating that he was not present on the date of occurrence. In support of their defence, the accused persons examined Baj Singh as DW-1, Makhan Singh as DW-2, Kulwinder Singh, Revenue Patwari as DW-3.

The trial court, after appraisal of the evidence before it, went on to record the conviction of the appellants and sentenced them as detailed above.

It was contended by the learned counsel for the appellants that a categoric finding has been recorded by the trial court regarding the appellants being in possession of the disputed land. In view of this, the appellants cannot be termed to be aggressors rather they had acted as a measure of self defence to protect their property from the trespassers who were the complainants.

It is also contended that in terms of Section 97 and 105 of the IPC, the appellants were well within their right of private defence if their property or possession was threatened. On the strength of this, it was sought to be pleaded that at best, the appellants could have been held to have been guilty of committing an offence under Section 308 as in the absence of any intention to commit the offence, the provisions of Section 307 of the IPC would not be attracted.

On the other hand, learned counsel for the State as also the

complainant, contended that the possession of the property/land was disputed and was debatable. In any eventuality, the party belonging to the complainant side, was absolutely unarmed whereas the appellants were armed with spears and gandasis which is suggestive of the fact that they had gathered on the spot with a pre-meditated intention to attack them. The assault was totally unprovoked and the complainants were actually not encroaching or trespassing to the land of the appellants but were within their field which was leased out to them by the Gram Panchayat and was in the immediate vicinity of the land in possession of the appellants. It was however conceded that there was some dispute regarding the portion of land which had been leased out by the Gram Panchayat and was in unauthorised occupation of the appellants.

I have heard learned counsel for the parties and have perused the record.

Although the findings recorded by the trial court qua the factum of possession though unequivocal, is still laced with confusion. A perusal of the statements of the witnesses i.e. PW-4 Bakshish Singh and PW-5 Mahn Singh leaves no doubt that the appellants were in possession of the property. Both the witnesses have candidly admitted that the accused party was in possession of the disputed land which they had been cultivating for the past eight years. Although an attempt was made by them to say that the possession had been retrieved by them on the same day after getting the land demarcated which fact was again belied by the statement made by Kulwinder Singh-Patwari who had appeared as DW-3. He has stated that no demarcation was got done.

There is, thus, no hesitation to hold that the appellants were in possession of the land where the incident is stated to have taken place. Whether it was authorised or unauthorised is not the purport of this controversy and is neither in the domain of this Court to answer on the basis of the fragile evidence before it.

Undeniably, the complainant party was assaulted and serious injuries were inflicted on the vital parts of the body by weapons, use of which could have easily caused the death of a person. There is also in evidence that the complainant and other injured persons were not armed, which is impliedly to say that they had no intention of either threatening the possession of the appellants or their property in any manner.

There is ample evidence to show that the land in possession of the complainants, which was pursuant to a lease deed executed by Gram Panchayat in their favour, was adjoining to the land in possession of the appellants with some dispute regarding the land over which the claim was overlapping. If the complainant party had strayed on that land in the belief that the land belongs to them, that would not tantamount to threatening the possession of the appellants.

Besides, as noticed above, they were unarmed and it could not be said that they had any intention to forcibly dispossess the appellants.

In view of this, I have no hesitation to hold that the appellants' presence on the spot, with dangerous weapons which were freely used to cause grievous injuries on the vital parts of the body, was a manifestation of their pre-meditative intent to inflict the said injuries upon the complainant party. The conviction so awarded by the trial court is, therefore, perfectly in order.

Consequently, the present appeal being devoid of any merit, is dismissed and the conviction and sentence awarded to the appellants is directed to be maintained. The bail bonds are directed to be cancelled forthwith.

**March 15, 2007** **( MAHESH GROVER )**
*monika* **JUDGE**